In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 878

GENE RAWDON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Upon the government's complaint and motion for summary judgment in the United States District Court for the Northern District of California, petitioner was assessed a total penalty of $300 for performing three inspections on civil aircraft at a time when his airman mechanic certificate had been suspended, in violation of 49 U.S.C. 1430(a)(2) (R. II, 76, 88, 175-176).[1] The court of appeals affirmed the

[1] The record in this Court consists of five volumes. Volume II contains all of the pertinent documents and it has been paginated separately.

judgment in a *per curiam* opinion (R. II, 2-4; Pet. App. i-v).

1. Based on information acquired during the investigation of an aircraft accident on April 27, 1960, the Administrator of the Federal Aviation Agency issued an Order of Suspension pursuant to Section 609 of the Federal Aviation Act of 1958 (49 U.S.C. 1429), suspending petitioner's airman mechanic certificate for a period of thirty days (R. II, 135). The order recited (1) that on April 20, 1960, petitioner had certified that the aircraft had been given a complete 100-hour inspection and was found to be airworthy, when, in fact, the aircraft was not airworthy, and (2) that the inspection had not been accomplished in accordance with the procedures prescribed by the Administrator, contrary to Section 18.30 of the Civil Air Regulations (14 C.F.R. 18.30 (1956)). The order of suspension informed petitioner of his right to appeal to the Civil Aeronautics Board (R. II, 136).

Petitioner appealed to the Civil Aeronautics Board and a hearing was held before an examiner. On January 30, 1961, the examiner found the evidence insufficient to establish lack of airworthiness of the aircraft at the time of the inspection but found that petitioner had not conducted parts of the inspection in accordance with prescribed procedure (R. II, 115-133). Accordingly, he reduced the suspension of petioner's airman certificate to a period of fifteen days. Petitioner's appeal to the full Civil Aeronautics Board was denied on June 15, 1961, the Board having determined that the Examiner's findings were supported by substantial, reliable and probative evidence

(R. II, 113-114). A petition for reconsideration was denied by the Board on September 27, 1961. An order was entered directing that the fifteen-day suspension become effective on October 7, 1961, with the proviso that, if petitioner failed to surrender his certificate by that date, the suspension would continue for a period of 15 days subsequent to the actual date of surrender (R. II, 110-111). Petitioner received notice of the final order by registered mail on October 4, 1961 (R. II, 93). He did not petition for review of the order in a court of appeals (R. II, 107-108).[2] Nor has he yet surrendered his airman certificate to the Regional Counsel of the Federal Aviation Agency as directed.[3]

On March 1, 1962, the government filed a libel in the United States District Court for the District of Kansas alleging that petitioner had exercised the privileges of the airman certificate subsequent to its suspension by performing inspections on three different aircraft on dates subsequent to the effective date of the order, thereby violating 49 U.S.C. 1430(a)(2) (R. II, 175-176). On April 2, 1963, the district court in Kansas transferred the action to the District Court for the Northern District of California (R. II, 151-152), petitioner having moved to the latter district.

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[2] Since no stay was sought in a court of appeals, see 49 U.S.C. 1486(d), the order became effective on the date specified therein.

[3] Petitioner may comply with the order of suspension by surrendering his certificate (in person or by mail) to the nearest General Aviation, Air Carrier, or Regional Offices of the FAA.

On March 6, 1964, the government filed a motion for summary judgment, setting forth the facts in affidavit form and attaching thereto the suspension orders and the inspection forms evidencing petitioner's exercise of his airman's privileges subsequent to the suspension order (R. II, 140-145). The motion was denied because it did not affirmatively appear that petitioner had received notice of the final suspension order (R. II, 138-139). On April 30, 1964, the government again moved for summary judgment, attaching, in addition to the other documents, a post office receipt showing that petitioner had received the final suspension order on October 4, 1961 (R. II, 88-90, 93, 99-101, 103-106). The district court granted the motion for summary judgment and assessed a penalty of $300 (R. II, 76).

2. The substance of petitioner's many contentions is an attack on the suspension of his airman mechanic certificate on October 7, 1961, so as to make him liable for civil penalties for subsequent exercise of privileges thereunder. There is no merit to petitioner's complaints. After the Administrator gave petitioner notice of suspension, the matter was heard in accordance with appropriate provisions by a Civil Aeronautics Board hearing examiner. Thereafter, it was reviewed by the full Civil Aeronautics Board and reconsidered by the Board on petitioner's motion. The suspension did not become final and effective until after that plenary consideration, and petitioner was given actual notice of the suspension and the effective date thereof. The order was not stayed, as petitioner apparently believes (see Pet. 13), by his informing

the agencies that he intended to "appeal." Nor did he petition a court of appeals for review of the order. The fact of suspension and the fact that petitioner had conducted the aircraft inspections alleged in the libel were uncontroverted in the district court. Disposition upon the government's motion for summary judgment was therefore proper, as the court of appeals held.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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